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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,335	12/21/2001	Jill Stamm	39672.0200	2536

20322 7590 10/23/2003

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EXAMINER

SUHOL, DMITRY

ART UNIT PAPER NUMBER

3712

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/028,335

Applicant(s)

STAMM ET AL.

Examiner

Dmitry Suhol

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-11, 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 9-11, the metes and bounds of the claims can't be determined. The claims are dependent from claim 8 which states "encouraging said child through at least one of a visual stimulus and an auditory stimulus", however claims 9-11 attempt to limit the "visual stimulus" and "auditory stimulus". Applicant's use of the phrase "at least one" (in claim 8) implies that only one of a visual or auditory stimulus needs to be utilized. Therefore the applicants can't limit the other "stimulus" in a dependent claim (i.e. if the examiner chooses to find the visual stimulus (a reference for) of claim 8, the applicants can no longer limit the auditory stimulus in claims 10-11 and if the examiner chooses to find (a reference for) the auditory stimulus of claim 8 the applicants can no longer limit the visual stimulus in claim 9).

Regarding claims 10-11, the metes and bounds of the claims can't be determined. Claim 11 is dependent from claim 10 which states "auditory stimulus comprises at least one of varied voice intonations and use of a sound-generating object", however claim 11 attempts to limit the "voice intonations". Applicant's use

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of the phrase "at least one" (in claim 10) implies that only one of a voice intonation or a sound-generating object needs to be utilized. Therefore the applicants can't limit the other "stimulus" in a dependent claim (i.e. if the examiner chooses to find the use of a sound-generating object (a reference for) of claim 10, the applicants can no longer limit the voice intonations in claims).

Regarding claim 14, the metes and bound of the claim encompassed by the phrase "steps of engaging, modeling, and prompting are performed in a playful manner" can't be determined. It is unclear what constitutes a "playful manner" for the above steps.

Regarding claim 15, it is unclear how a system as claimed by the parent claim 1 can be an electronic form. The system, as claimed, is made up of activity cards to be used with the claimed method steps, therefore it is unclear where an electronic form comes into play.

The remainder of the office action considers the claims as best understood.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Brilliant! Beginnings™ Baby Brain Basics™ Birth to 12 months Parent Kit”, here from referred to as Brilliant beginnings in view of Werzberger ‘298. Brilliant beginnings discloses a system and method for facilitating early brain development containing most of the elements of the claims including, obtaining a system for facilitating early brain development (read onto obtaining the brilliant beginnings system) wherein the system targets a predetermined stage of development (pages 79-80 in guide book) as required by claims 1, selecting an activity card wherein the activity card describes at least one activity that stimulates a predetermined aspect of brain development (read onto the selection of the appropriate page of activities described on pages 84, 88-90, 94-97, 103-108, 114-118) as required by claims 1, 4 and 16. The step of engaging a child’s attention, as required by claims 1 and 16, is described through out pages 84, 88-90, 94-97, 103-108, 114-118. The steps of modeling a selected activity for a child and prompting the child to perform the selected activity, as required by claims 1, 12 and 16, is described on page 115 under the activity entitled “Let’s Go Bowling”. Obtaining stage specific activity cards comprising caregiver directions, as required by claims 2 and 16, is described on pages 79-80 and the different activities and caregiver instructions are shown in pages 84, 88-90, 94-97, 103-108 and 114-118. Obtaining a first item to stimulate vision, as required by claims 2 and 5, is described on page 84 under the heading “Faces” where an item (picture) is obtained and used to stimulate a baby’s visual acuity. Obtaining a second item whose use promotes the concept of attention, as

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required by claims 3 and 6, is described on page 84 under the heading "Changeable Mobile" where there are a plurality of objects obtained and used to promote attention from a baby. Brilliant beginnings further discloses the importance of facial contact with a baby/child and directing the child attention to a defined space (page 84, activities entitled "Faces", "Funny Faces", and "Changeable Mobile", where the location of the mobile of the pictures is considered to be a defined space), as well as explicitly teaching a step of engagement being comprised of focusing a child's attention on an activity by establishing eye contact with the child (page 103, activity entitled "Pop the Balloon").

Regarding claim 8, encouraging a child through at least one of a visual stimulus and an auditory stimulus are described on page 84, activities entitled "Faces", "Funny Faces", "Changeable Mobile" and "The Magic Breath".

Regarding claim 9, visual stimulus comprising at least one of varied facial expressions and use of an object is described on page 84, activities entitled "Faces" and "Funny Faces".

Regarding claim 10, the use of a sound-generating object to engage a child is described on page 95, activity entitled "Bells and Things" and page 103, activity entitled "Jingle the Bell".

Regarding claim 11, varied voice intonations are described throughout the guide book including on pages 84, activity entitled "The Magic Breadth", page 90, activity entitled "Sing Songs" and "Read, Read, Read" and especially on page 96, activity entitled "Leg over Leg".

The use of different manners of providing instructions, as required by claim 13, is pointed to through out the guidebook. For example, on page 115 all of the activities require instructions and the step of demonstrating the activity as described would read upon the use of minimal verbal cues.

Regarding claim 14, it is considered that any demonstration of the activity described on page 115 is done in a playful manner, especially sine the entire point is to encourage the child/infant to do the activity.

Although Brilliant beginnings discloses most of the elements of the claims the reference utilizes a guide book and not "activity cards" as claimed by claims 1-2. However Werzberger '298 teaches that it is known to provide activities listed on activity cards to educate and instruct (figure 9, element 416). Therefore it would have been obvious to one having ordinary skill in the art at the time of the claimed invention to print the activities of Brilliant beginnings upon activity cards instead of in a guide book for the purpose of providing a easily manipulated activity instruction.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brilliant beginnings and Werzberger '298, as stated above, and further in view of Cohen '658. Although Brilliant beginnings, as modified by Cohen, discloses all the elements of the claims, as stated above, the reference fails to teach a system being electronic, as required by claim 15. However, Cohen teaches that it is known to provide an educational system utilizing activities in an electronic form (see abstract). Therefore it would have been obvious to provide a system of

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Brilliant beginnings as an electronic version for the purpose of introducing infants and young children to computers.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 703-305-0085. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal line extending to the right.

ds

DERRIS H. BANKS  
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